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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES: QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[21 August 1995]

1. In the past, the International Federation of Human Rights and its Northern Ireland affiliate, the Committee on the Administration of Justice (CAJ), have made representations to the Sub-Commission in respect of human rights issues in Northern Ireland. This year, for the first time, the IFHR and the CAJ are joined in making this submission by the Irish Council for Civil Liberties (ICCL), the IFHR's affiliate in the Republic of Ireland. We respectfully request that the Sub-Commission takes steps to persuade the Governments of both the United Kingdom and Ireland that they should respond quickly and concretely to protect human rights in the new situation which now pertains.

Northern Ireland

2. Since the last submission there has been a cessation of violence by the main paramilitary groups involved in the Northern Ireland conflict. This has lasted for almost 11 months and has been virtually complete with no significant offensive actions being taken. We very much welcome this development.

3. Prior to the cessation of violence the United Kingdom Government justified its emergency measures as a response to the ongoing paramilitary violence. In the changed circumstances which now prevail we had hoped that the Government would have taken steps to improve the human rights situation and thereby consolidate the moves towards peace. Unfortunately, this has not taken place to any significant extent. We are disappointed that the United Kingdom Government has given no indication that it will withdraw its derogations from the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights. Given the cessations of violence there can now be no suggestion that there is a public emergency which threatens the life of the nation and that emergency measures are strictly required by the exigencies of the situation. The position of the International Federation of Human Rights and its affiliates in Ireland is straightforward - there is no emergency and there can be no justification for emergency law. We are encouraged by the recent recommendation of the Human Rights Committee that concrete steps should be taken so as to permit the early withdrawal of the derogation made pursuant to article 4 and to dismantle the apparatus of laws infringing civil liberties which were designed for periods of emergency. We would request that the Sub-Commission also urge the Government of the United Kingdom to repeal its emergency legislation and to withdraw its derogation from the ICCPR.

4. Despite the cessation of violence, which eliminates the risk of re-offending in most cases, there has been no move by the United Kingdom towards releasing paramilitary prisoners who have already served long prison sentences. Insufficient progress has been made to transfer prisoners from Britain who are anxious to serve their sentences near their families in Northern Ireland. Furthermore, the regime under which these prisoners are held has become more punitive and there is currently a considerable degree of tension in relation to this issue.

The Republic of Ireland

5. Paramilitary violence from Northern Ireland has in the past spilled over into the Republic of Ireland. In 1972, the Republic reactivated the Offences Against the State Act, a 1939 anti-terrorist statute used periodically since then. The Act provides for the banning of organizations, meetings and publications and the closing down of buildings; for the establishment of special courts; and for internment without trial.

6. In June 1972, the Irish Government set up a special criminal court for paramilitary offences. The court sits without a jury, thus depriving accused persons of trial by jury which is a fundamental right for all except minor offences under the Irish justice system. The special court tries scheduled offences, i.e. offences involving the use of firearms or explosives or membership of illegal organizations, but it can also try any offence

whatsoever if the Director of Public Prosecutions so orders. In 1972, the rules of evidence were altered so that the belief of a senior police officer that the accused is a member of an illegal organization - a serious charge - is evidence of such membership. The police officer does not have to give the reasons for his or her belief.

7. The special criminal court has tried over 2,000 cases since 1972 and has been responsible for a number of very controversial convictions, some of which have been overturned in recent years. The number of cases coming before the special court had been steadily declining for some years before the paramilitary cease-fires in Northern Ireland. The ICCL has always maintained that the conditions in the Republic did not warrant the establishment of the special criminal court and in July 1993, the United Nations Human Rights Committee, in its comments on the Irish report submitted under the ICCPR, expressed its concern about the special criminal court and said it did not consider that the continued existence of the court was justified. We would point out that this comment was made more than one year before the paramilitary cease-fires in Northern Ireland.

8. The Irish Government has welcomed the cessation of violence in Northern Ireland. It has responded by ending a state of emergency, which had not had any practical effect for many years, and by releasing almost half of the around 75 paramilitary or paramilitary-linked prisoners in the Republic. The prisoners have been released on the grounds that, following the cease-fire, they are unlikely to re-offend. We welcome the release of prisoners and hope it will be extended to other prisoners, including some who were given 40-year minimum sentences in lieu of the death penalty for the murder of members of the security forces.

9. We do not believe that it can be seriously argued now that there is any necessity for the Offences Against the State Act or the special criminal court in the Republic of Ireland today. We believe that a proper and proportionate response to the paramilitary cease-fires and respect for the Irish Government's international human rights obligations require that both measures be withdrawn forthwith. Such a response by the Irish Government would, in our view, considerably strengthen the peace process in Northern Ireland and would encourage the United Kingdom Government to take an equally humane and constructive attitude both in regard to its emergency laws and to the release of paramilitary prisoners.

Conclusion

10. In conclusion, the International Federation of Human Rights, the Committee on the Administration of Justice and the Irish Council for Civil Liberties respectfully request the Sub-Commission and the respective special rapporteurs to take all appropriate steps to encourage the United Kingdom and Irish Governments to end all emergency legislation and emergency measures and to bring their laws and practice into conformity with international human rights standards. We believe that this is particularly appropriate and necessary in response to the ending of paramilitary violence and the emergency in Northern Ireland and to the opportunity that is now present to attempt to secure lasting peace in that area.